

Testimony of R. Doug Lewis, Executive Director
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For the
U.S. Election Assistance Commission

Commissioners:

Thank you for giving all of us an opportunity to be with you to reflect on Election 2006. In addition to a review of this election, I also will try to indicate not only where we are as a result of the election but also some of the opportunities and challenges that face us in 2007 and future years.

Current Situation: Let me say it loud and clear at the beginning: Election 2006 was a resounding success. Despite what some groups and organizations are claiming, it is clear that the process worked for voters throughout virtually all of America. Yes, I know that there were pockets of problems – but the dire predictions of impending disaster never materialized. Actually, we need to be appreciative of the men and women of the elections profession who did remarkably well under maybe the most difficult circumstances ever to face elections administrators. The point is this: Preparation at the state and local levels worked. The process worked for voters. HAVA money worked to make the process better.

Federal Mandates: Between the Help American Vote Act (HAVA) and state legislative mandates or state administrative changes, election officials faced a near impossibility of making all those changes within two years – and making the election an accurate reflection of the public's will. Consider the changes from HAVA:

- the full implementation of statewide voter databases;
- final deadlines for new voting equipment,
- disability mandates requiring that voting equipment allow blind and visually impaired voters to be able to vote secretly and independently;
- each state must define what constitutes a vote for that state;
- new identification requirements for first-time voters, and
- the second federal election for use of provisional ballots.

This was the most massive change in the election process since the Voting Rights Act of 1965, and the effects of HAVA reached deeper into administrative changes on both the scope and magnitude of every segment of the election processes, and it reached into every state and territory. Ordinarily, when we change something major in elections, we only do one major item and one or two minor items at a time because of the potential for chaos in the elections immediately after such changes. In this instance everything changed all at once.

States Added Mandates: On top of those massive changes as a result of Federal legislation, state legislatures in more than half of the states ordered additional changes ranging from paper

trail legislation, to electronic poll books, to permanent absentee status, to early voting implementation, to increased voter ID changes. We piled change upon change that would break most professions. *Despite* all of what was thrown at election jurisdictions large and small, urban and rural, from wealthy and subsistence level operations and everything in between, throughout more than 7,800 jurisdictions in America, the professional men and women who serve as election administrators made it all come together so well that 88% of the public responded that they had faith that their votes had been counted accurately. I want to make sure this point is not lost: CNN (Cable News Network) in its exit polls showed that voters had a confidence level of 9 out of every 10 voters who believe the process works for them.

In 98.8% of the jurisdictions of America, the process worked so well that voter confidence rose to levels seen only before Election 2000. Whether you are a Congressman, or a Senator, or an EAC Commissioner, or a state officer holder, or a local politician or an election administrator, that is GREAT news for America.

If Americans ever lose their faith in the fairness and accuracy of the process, democracy will be lost. Some partisans continue to allege the process is broken, even in the face of such an overwhelming response from the voters about their confidence in the accuracy of vote counting. From this point forward, we must insist that allegations have some proof with them; if no proof is forthcoming then those alleging problems need to be told to produce proof – or hush.

Useful Questions: During this election, I found it useful to call or email reporters who were writing of allegations by various groups or individuals. I asked the reporters these simple questions:

- Where EXACTLY did a person have a problem that was alleged?
- What state? What county?
- What precinct?
- What time of the day?
- What exactly is supposed to have happened?
- What was the name of the specific voter(s) it happened to?
- When I asked reporters those questions and encouraged them to go back and ask the person who made the allegations the answers to those questions, it was amazing how many “problems” disappeared. As a result, reporters in many of those instances changed the updates to their stories.

Reported Problems: Does that mean there were not legitimate problems in Election 2006? No. Clearly some places had difficulties. But those were exceptions in this election. Each of the organizations here today would be delighted to assist by getting election officials to find out what truly happened in each of those instances. I have asked the states to assist us in tracking down any publicly reported problems. Our objective is to trace each and every one of those alleged problems and get an official response from the election officials in the affected jurisdictions as to exactly what happened. We and you will want to know if the reports floating around are accurate. What were the actual circumstances? We and you will want to know the outcome, and if a real problem occurred, what are they doing to fix it? Why are we working at finding out the right answers to each of these? Because the spin doctors who have their own

vested interests to serve get away with partial facts – or totally incorrect “facts”. And, if there are *real* problems we want to fix them.

What we have learned over a period of years now is that many of the publicly reported stories have gotten material facts wrong. Perhaps that is not unusual since lawyers and partisans for losing campaigns tend to stretch the information to fit circumstances they believe will assist their campaigns. In normal times we could live with some of that and chalk it up to rhetoric. But in recent years there has been a sustained attack on the process itself and the people who administer it. No election official minds when people find fault with genuine problems. We want to correct mistakes and make sure the process works well for voters. But some of the things that get labeled as problems and/or administrative errors could realistically only be labeled as such if we lived in the Twilight Zone.

Future Function for EAC: My request to the EAC is to take over this function for all future elections. Track down reported problems and get official government responses to reported situations. This is far too important to let go by the wayside. Improvements come from learning from actual instances if and when such instances occur. If we find systemic problems then the EAC can advise Congress when major changes may be necessary. But currently much of what is labeled as a problem is a normal course. The elections process has many procedures to provide for ways to discover problems and recover from them during an election. Nothing in the design of American democracy can guarantee a “perfect” election. We could legislate for the next 20 years and still not achieve that perfection. As a profession we seek a *perfect* election; as a society we are entitled to a *fair* election, not a perfect one.

Recognize that some “problems” are not problems but the process working as it was designed to work. For instance one of the “problems” reported in a recent report was that power outages in Tennessee forced battery backups to be used. In communication with Brook Thompson in Tennessee I discovered an example that is simply amazing: a power outage occurs and the jurisdictions resort to the battery backups on the units. And this is labeled as an example of a failure of the process? The units were designed in accordance with the Voting Systems Guidelines so that a battery backup is required to be available and that backup gets used. It seems to me that the process is working as it was designed to work. If that story is not told, then it gets to be another alleged failure of the process.

Learning from Mistakes: When mistakes and errors are made, we can all learn from them. Election officials are not afraid to admit our mistakes when we make them. In fact, as a profession our people are more likely to report their own mistakes even if they did not become common knowledge. We have a jurisdiction in California where the election official reported problems that were not widely known and may have affected the outcome of an election where only a handful of votes decided an issue. If legally permissible, they may redo the election. Election officials want this process to work.

We all know the difference between the optimist (the glass is half-full) and the pessimist (the glass is half-empty) but in current times we have discovered something new. The glass is filled 98,8% of the way and we are being told that it isn’t perfect. We are being told that to fix the 1% we need to overhaul not only how the glass gets filled but the people filling the glass.

Pollworkers: We have all heard the complaints about pollworkers, but the reality is that we cannot run this process without them. And for every bad one there are at least four good ones. Complaining about pollworkers is not a solution. Recognition has to sink in: we are expecting far too much from our pollworkers. We expect them to know 80 to 200 page manuals on what to do in the polling place. We expect them to get all the legal provisions correct every time. We expect them to remain polite and cordial for the 14 to 16-hour day we work them when some voters or some partisans are not cordial in their dealings with pollworkers. We expect them to be able to set up voting equipment and/or to repair it when it doesn't work. We expect them to be able to explain to people how to vote on the equipment even when voters indicate they don't want any assistance. We expect them to know secondary languages to assist voters in their native language. And, we expect them to continue doing this even when some in the society deride their efforts and their capabilities.

We have to recognize that if our pollworker base continues to primarily consist of those 65 and older, then we must be looking at a redesign of the process. We have made this process far more complicated than it was even 20 years ago, and loaded on more and more responsibilities. Frankly, we have come to the point that we expect too much from pollworkers.

The Election Center will have a National Task Force on Training in 2007, where we look at training of staff, pollworkers, voters, candidates and media. One key element of that Task Force will be pollworker training. We have to revisit the ways we train them and how much information can be retained from the kinds of training we do for one to two to three hours. We will be looking for innovative and model pollworker training methods. I don't expect us to solve this problem with a Task Force that lasts a year or so. But at least it will be a good beginning.

Voting Systems and Standards: One of the biggest obstacles for the EAC in the near term is how much is enough in the development of standards or guidelines for voting systems? What is the level of testing that doesn't squeeze all of the manufacturers out of the process? And how expensive can it be or should it be if we want to maintain healthy voting systems availability?

There is very likely going to be considerable consolidation within the industry. The federal government has to find the appropriate balance between necessary regulation and requirements and those that essentially lead to the survival of one or two vendors. Maybe we need to look at the way the medical industry does with some of its equipment where systems get locked into limited or no changes for a period of years and then updates apply when the next generation of systems comes into the market. While the Guidelines cannot be static like they were for many years, they also probably cannot change every year or two and expect to have manufacturers survive. This is not automobile manufacturing or a large and wealthy industry. I wish I knew what is the appropriate mix of standards, testing and manufacturing cycles but unfortunately I don't have a ready answer either. My concern is that we not just assume that we can regulate and change design standards or requirements on a continuous basis and expect to have any companies left to meet those standards.

Those who have heard me in public sessions over the last 10 years know that I have been critical of the voting systems industry, especially when salesmen are allowed to continuously make claims that their devices frankly can't live up to. But we also have to get out of the mentality that the manufacturers and sellers of voting systems are part of an evil plot to somehow subvert the public good.

Missing Standards: From the examples of the first uses of electronic poll books in various jurisdictions around the nation, it may appear that the EAC needs to look at developing guidelines for electronic voter records – not only poll books but also databases as they continue to evolve. The biggest problems in this election seem to have come from the inability of polling sites to retrieve appropriate records on voters. We took the view many years ago that some kind of standards or guidelines were important for voting systems and I think most of us still believe that is useful and has led to overall improvements. However, if the voting system works properly but we deny voters access to the process because of newer database technologies, isn't that as important as standards for voting systems?

Statewide Databases: It should come as no surprise to anyone that some of these have not yet worked well. Some of the vendors had products that simply could not meet the exacting standards required in public elections to make sure that voters are protected and that legitimately eligible voters get to participate. All of us warned Congress that the demands for development of these was too short a time period to truly do the job and that looks to be the case in several instances. But states will get this right if we give them some room to find solutions that work not only for HAVA compliance but more importantly that the databases evolve into what local election jurisdictions really need: a database that becomes a vital part of their election management tools to serve as much more than a simple registry of voters.

Importance of Money in the Process: There is no question that the ongoing costs created by HAVA have impacted state and local governments. I know that some national organizations have repeatedly asked the Congress for on-going funding of elections to pay for these additional and on-going costs. I am not one who favors the federal government becoming a consistent source of funding. I am speaking for me, personally, on this subject. I frankly don't know what most of our members want in this regard. But this much I do know: if a continuous supply of funds is found, it always leads to the funding source wanting to tell those receiving the funds exactly how to run things.

My advice is to leave funding to the states so that the process works as the framers of our Constitution intended. While it puts additional burdens on the states, it also preserves that ability of the states to determine what works best for their voters. The incredible genius of this American democracy is that it does have variety and always provides a laboratory for new and innovative ideas that originate from state and local governments. That separation from the federal government has also made it exceedingly difficult for any group or individual to figure out ways to manipulate the process because it has such diversity and variety that it makes it impractical to even try. However, the states also have to find ways to make sure that local governments are not left holding the empty purse. If states want to protect their ability to have authority over elections then they also are likely to have to increase their support for local

governments for election costs. If they do not do so, then local governments will indeed look to the federal government for assistance.

Why We Need the EAC: Here is why I, for one, am delighted that there is an Election Assistance Commission. Each of you is an accomplished individual. You have a relationship with the political policy makers who were instrumental in your appointment to and service on the Commission. On almost all issues that have come before the Commission, you have acted in a bi-partisan manner to assure that the process serves the voters fairly and equitably.

You have built a professional staff that is learning and examining the election process from a variety of perspectives. Congress put you here to provide them and America with the best advice you can give when policy issues arrive. As a Commission, you have been a reflection of the diversity of America. That is healthy and useful to Congress and to the nation. But there are more important aspects at stake this time.

With the change of the party in power in Congress – reflecting the ways the voters voted it – enormous changes are coming in the Congressional committees that have jurisdiction over election legislation. It appears that both the chair and the ranking members in Senate Rules Committee will be new to the details of American elections. It also appears that the House Administration may face the same situation although leadership of the Committee has not yet been publicly established. Turnover at the Congressional level leaves the committees of jurisdiction over elections without staff experience in election policy. If we have learned anything from the past six years it is that election administration in America is far more complex than it appears. As Congressional staff became more knowledgeable about potential effects of their proposed ideas, legislation adjusted immensely.

With new leadership from both political parties and potentially in both the Senate and the House, the EAC becomes more important than ever. It will be your calm, rational and reasoned voices that can help legislators new to these responsibilities know what is reasonable in election legislation and what is likely to result in *serious* unintended consequences.

It will be up to you to offer facts to policy makers where spin doctors have stretched – or ignored – facts. That's why it is important that your resources be used to build the equivalent of a consumer's report for Congress and the news media. Your role is important to separate fact from fiction so that policy is based on actual events rather than smoke and mirrors.

In an era when partisanship behavior in Congress, on both sides of the aisle, tends to reflect intense rivalries and leads to bi-tter partisans rather than bi-partisans, the EAC can be the element to get the parties to see that the American democratic process is more important than party ideologies. This can be an exciting time for the EAC and one in which the Commission's value to America becomes even more evident.

We need you and your best efforts. Whether that 'we' means the election profession, voting rights activists, elected office holders or simply the nation's voters, the EAC as an organization and you as individuals are about to face real challenges that define the Commission for generations to come. Your ability to help the elected officials from the parties and the leaders

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of Congress, to see the “right” thing to do will be important and will characterize the EAC for both its immediate and long-term future.

The pressure to become a part of the intense partisan wars is likely to affect the Commission and the Commissioners. That seems to be the “Washington Way” in recent years. When the most ardent of the partisans begin their pressure on you, you can remind all of us who are pushing or pulling at you, that your oath of office is to the Constitution of the United States and to the people. I am not aware of an official oath of the United States that pledges allegiance to the party or to individual leaders.

Conclusion: The election system is going through the most concentrated change in its history. Massive changes affect any institution – whether it is General Motors, or the military, or the federal government, or the democratic process. We know from academicians and organizational behaviorists that if you continue to pile change upon change in short time periods, the institution suffers or breaks. The election process in America needs time to digest HAVA before we launch into any major new structural changes. We can absorb a change of whether voting systems need to be paper based, but any additional fundamental changes push the process closer to the breaking point. This is not to say that additional changes can’t be made...but rather it is to say that we need a period in which to consolidate what we have learned and master the current changes before we proceed with additions. The EAC can play a critical role by monitoring the system, investigating problems, and providing Congress with both information and perspective.

Thank you again for asking me and the others to appear before you about the state of elections in America. Each of us looks forward to working with you for continued election success.

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